

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SILVESTRE B. CUEVAS,

Plaintiff,

v.

2:08 CV 16  
(Maxwell)

DEPT. OF JUSTICE, BUREAU  
OF PRISONS, USP-HAZELTON  
and JOE DRIVER,

Defendants.

ORDER

It will be recalled that on January 17, 2008, *pro se* Plaintiff Silvestre B. Cuevas filed a civil rights complaint against the above-named Defendants. In his complaint, the Plaintiff requests that the Court direct the Bureau of Prisons and the Immigration and Customs Enforcement Agency to separate the Plaintiff from all other inmates throughout his incarceration. Additionally, the Plaintiff seeks compensatory damages due to his infection with Hepatitis A and the psychological distress he alleges was inflicted upon him by Bureau of Prisons' staff.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.01 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. § 1915(e).

On April 7, 2008, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation On Plaintiff's Motion For Injunctive Relief wherein he recommended that the Plaintiff's request for injunctive relief be denied. Magistrate Judge Kaull's April 7, 2008, Opinion/Report And Recommendation was accepted in whole by Order entered July 25, 2008. Accordingly, the Court's July 25, 2008, Order denied the Plaintiff's Motion For Temporary Injunction.

In a separate April 7, 2008, Order, Magistrate Judge Kaull stated that summary dismissal of the above-styled civil action was not appropriate and provided the Defendants with sixty days in which to file an Answer to the Plaintiff's Complaint. The Defendant's Motion To Dismiss Or For Summary Judgment and Memorandum In Support thereof were filed on June 6, 2008. The Plaintiff's Motion In Response To Defendant's Motion To Dismiss Or For Summary Judgment was filed on July 21, 2008.

On November 17, 2008, Magistrate Judge Kaull issued an Opinion/Report And Recommendation wherein he recommended that the Defendant's Motion To Dismiss Or For Summary Judgment be denied to the extent that it seeks dismissal of the above-styled civil action on exhaustion grounds, but be granted to the extent that it seeks judgment as a matter of law; and that the Plaintiff's Complaint be denied and dismissed with prejudice.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten (10) days from the date they were served with copies of said Opinion/Report and Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

Following the entry of a December 3, 2008, Order granting his request for an extension of time to file objections to Magistrate Judge Kaull's Opinion/Report And Recommendation, the Plaintiff's Response And Objection To Opinion And Recommendation was filed on January 2, 2009.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard,

the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on January 2, 2009, the Plaintiff filed a Response And Objection To Opinion And Recommendation. The Court has conducted a *de novo* review only as to the portions of the Opinion/Report and Recommendation to which the Plaintiff objected. The remaining portions of the Opinion/Report And Recommendation to which the Plaintiff has not objected have been reviewed for clear error.

The Court finds that the issues raised by the Plaintiff in his Response And Objection To Opinion And Recommendation were thoroughly considered by Magistrate Judge Kaull in said Opinion/Report And Recommendation. The Court is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

**ORDERED** that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on November 17, 2008 (Docket No. 42), be, and the same is hereby, **ACCEPTED** in whole. It is further

**ORDERED** that the Defendant's Motion To Dismiss Or For Summary Judgment (Docket No. 24) be and the same is hereby, **DENIED** to the extent that it seeks dismissal of the above-styled civil action on exhaustion grounds. It is further

**ORDERED** that the Defendant's Motion To Dismiss Or For Summary Judgment (Docket No. 24) be and the same is hereby, **GRANTED** to the extent that it seeks judgment as a matter of law. It is further

**ORDERED** that the Plaintiff's Complaint (Docket No. 1) be, and the same is hereby, **DENIED and DISMISSED** with prejudice. It is further

**ORDERED** that the Clerk of Court shall enter judgment for the Defendants. It is further

**ORDERED** that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** February 5<sup>th</sup>, 2009

  
United States District Judge